Supreme Court, U.S.
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No. 95-784

IN THE

Supreme Court of the United States

October Term, 1995

MICHAEL T. PODGURSKI,

Petitioner Pro Se,

vs.

SUFFOLK COUNTY, SUFFOLK COUNTY DEPT. OF LAW, PATRICK G. HALPIN, RICHARD FINN, JOHN TURNER, GEORGE KEIGH, HAROLD TRANCHON, JR., RICHARD H. O'BRIEN, HAROLD S. SCHWARTZ, NASSAU COUNTY GIRL SCOUTS INC., TOWN OF BROOKHAVEN DEPT. OF LAW, JOHN/JANE DOE 1-99,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS SUFFOLK COUNTY, HALPIN, FINN, TURNER AND THE NASSAU COUNTY GIRL SCOUTS INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SAMUEL KIRSCHENBAUM, ESQ.
KIRSCHENBAUM & KIRSCHENBAUM, P.C.
Attorneys for Defendants-Respondents Suffolk County, Halpin, Finn, Turner, and The Nassau County Girl Scouts Inc.
200 Garden City Plaza
Garden City, New York 11530
(516) 747-6700

DICK BAILEY SERVICE (212) 608-7666 (718) 522-4363 (516) 222-2470 (914) 682-0848 Fax: (718) 522-4024
1-800-531-2028

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QUESTIONS PRESENTED

Whether 42 U.S.C. §1983 provides a basis for federal jurisdiction over a boundary and easement dispute between the owners of adjacent parcels of real property.

The United States District Court dismissed petitioner's complaint and ruled that the proper forum for such a dispute is state court.

Whether the United States Court of Appeals for the Second Circuit correctly dismissed petitioner's appeal of the decision dismissing his complaint.

The appeals court ruled that the appeal was frivolous.

PRELIMINARY STATEMENT

This case involves an ordinary boundary dispute between two adjacent landowners. Petitioner claims that his title extends fifty feet onto land owned by the County of Suffolk. Petitioner also claims a right of way over a portion of the property.

Petitioner is a pro se litigant who has been persistent in his attempts to maintain an action in federal court, although his appeal from the order of the United States District Court for the Southern District of New York dismissing his action was characterized as "frivolous" by the United States Court of Appeals for the Second Circuit. Undeterred by the District Court's and Second Circuit's rulings, petitioner seeks a writ of certiorari. There is no basis for federal court jurisdiction of petitioner's claims, and as with petitioner's prior appeal, his petition for a writ of certiorari is frivolous.

STATEMENT OF FACTS

By deed dated December 30, 1986, the Girl Scouts of Nassau County, Inc. conveyed title to a parcel of property known as Camp Barstow to Suffolk County. Petitioner is an owner of a parcel adjacent to Camp Barstow. He acquired title to his parcel of property by deed dated December 29, 1980. Petitioner asserts that he is the owner of approximately fifty feet of land on his easterly boundary which is part of Camp Barstow, and he claims that there exists a right-of-way.

With respect to its rights concerning the property in issue, Suffolk County has acted as any private property owner. Suffolk County has not acted under color of law. Thus, the issue is whether a real property dispute provides a basis for federal jurisdiction under 42 U.S.C. §1983 as a result of one of the property owners being a local government. We submit that a local government which asserts property rights in a manner no

different from that of any private person cannot be held liable under 42 U.S.C. §1983. Nor can such a local government be found to have violated the Fifth and Fourteenth Amendments to the Constitution based on its assertion of ownership rights to real property.

ORDERS OF THE COURTS BELOW

By order dated May 1, 1992, United States District Court Judge Sterling Johnson dismissed petitioner's complaint as against all defendants except Suffolk County and its officials, defendants Halpin, Finn and Turner. A copy of Judge Johnson's order is annexed as Appendix C to the petition for a writ of certiorari.

By memorandum and order dated March 31, 1995, United States District Court Judge David Trager dismissed petitioner's complaint as against the remaining defendants. A copy of Judge Trager's memorandum and order is annexed

as Appendix B to the petition for a writ of certiorari. A copy of the judgment entered based on Judge Trager's memorandum and order is included in Appendix B to the petition for a writ of certiorari. Petitioner's appeal to the United States District Court for the Second Circuit was dismissed as frivolous, by order dated July 17, 1995, a copy of which is annexed as Appendix A to the petition for a writ of certiorari. Petitioner's petition for rehearing and suggestion that the action be reheard in banc was denied by order dated September 7, 1995. On November 20, 1995, petitioner filed his petition for a writ of certiorari.

ARGUMENT

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED

Petitioner's pro se petition is, in general, incomprehensible, containing numerous irrational claims and complaints which fail to

demonstrate any basis of special and important reasons to grant the petition. The courts below have ruled correctly and consistently in this case. Although petitioner has had available to him adequate state remedies, petitioner has chosen to engage in lengthy and vexatious litigation in the federal courts. Petitioner should be sanctioned in order to deter him from engaging in further harassment of these defendants, and respondents request that damages and costs be awarded against petitioner, pursuant to Rule 42.2 of the Rules of the Supreme Court of the United States, on the grounds that the petition is frivolous. Respondents have been required to defend against petitioner's frivolous claims for several years, incurring substantial expenses in excess of $25,000.00.

There is no basis for granting the petition for a writ of certiorari. The Second Circuit has not rendered a decision in conflict with another United States Court of

Appeals, has not decided a federal question so as to create a conflict with a state court of last resort, and has not departed from the accepted and usual course of judicial proceedings. Rules of The Supreme Court of The United States, Rule 10.1. Additionally, petitioner's failure to clearly present the essential information necessary for an adequate understanding of this matter is sufficient reason for denying the petition. Rules of The Supreme Court of The United States, Rule 14.5. The fact that there has been a prior ruling that petitioner's appeal to the Second Circuit was frivolous highlights the lack of merit in the petition for a writ of certiorari.

In analogous cases involving condemnation proceedings, a difference of opinion between the condemnor and the land owner, with respect to the value of the property sought to be acquired, has not been found to be a taking without due process and just compensation.

Gigliotti v. Redevelopment Authority of New Cassel, 362 F. Supp. 764 (W.D. Pa. 1983), affirmed without opinion, 492 F.2d 1238 (3rd Cir. 1983).

No employee of Suffolk County acted under color of any statute, ordinance, regulation, custom or usage as that phrase has been interpreted by the courts. Suffolk County has been exercising its rights as a property owner and has, in the exercise of its property rights, always acted in good faith. *See Schroder v. Volker*, 864 F.2d 97 (10th Cir. 1988). The purpose of 42 U.S.C. §1983 is to give a person, who under color of state law is deprived of rights, privileges or immunities secured by the Constitution, adequate remedy where the state remedy though adequate in theory is not available in practice. *Monroe v. Pape*, 365 U.S. 167 (1961).

§1983 is not itself a source of substantive rights, but provides remedies to vindicate federal rights elsewhere conferred.

Baker v. McCollan, 443 U.S. 137 (1979); *Graham v. Conner*, 490 U.S. 386 (1989). In order to state a cognizable claim under §1983, the pleading must identify the federally protected right. *Chapman v. Houston Welfare Rights Organization*, 441 U.S. 600 (1979). Petitioner has no Federally protected right because Suffolk County is not seeking to confiscate his real property without just compensation. Suffolk County's position is that petitioner is not the owner of the disputed portion of real property, nor does he have a right to use the so-called right-of-way. Such a grievance as petitioner asserts is appropriately heard in state court. Suffolk County is an adjacent landowner seeking to enforce rights acquired in a proprietary capacity as opposed to a governmental capacity. *See United States v. Certain Parcels of Land in Los Angeles County*, 63 F. Supp. 175 (S.D. Cal 1945); *People of The State of New York v. Witherspoon*, 52 Misc. 2d 320, 275 N.Y.S.2d 592 (Dist. Ct. Suffolk Co.

1966).

CONCLUSION

The petition for a writ of certiorari should be denied and appropriate sanctions should be imposed.

KIRSCHENBAUM & KIRSCHENBAUM, P.C.

By: _____
SAMUEL KIRSCHENBAUM
Attorneys for Respondents
Suffolk County, Halpin, Finn,
Turner and The Nassau County
Girl Scouts Inc.
200 Garden City Plaza
Garden City, New York 11530
(516) 747-6700